

EXHIBIT A



Transcript of **Demurrer**

Wednesday, October 26, 2022

Richard Grenell v. Olivia Troye

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Reference Number: 122149

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

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5 RICHARD GRENELL,

:

6 Plaintiff,

:

7 v.

: Case No.

8 OLIVIA TROYE,

: CL22001907

9 Defendants.

:

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11

12

13 Wednesday, October 26, 2022

14

15 HEARING ON DEMURRER

16 The hearing in the above-entitled matter

17 convened, pursuant to notice, at 11:06 a.m.

18

19 BEFORE:

20 JAMES CLARK, Circuit Court Judge

21

22

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1 P R O C E E D I N G S

2 MR. CRAIG: Good morning, Your Honor. I'm
3 Tom Craig for the Defendant Olivia Troye.

4 THE COURT: It comes on Defendant's demurrer.

5 MR. CRAIG: Yes, Your Honor.

6 Good morning. I'm Tom Craig for the
7 defendant. Ms. Troye is also with me here.

8 THE COURT: I'm sorry. We have a court
9 reporter?

10 MR. CRAIG: Yes. I'm sorry. Ms. Crump.

11 THE COURT: No problem.

12 [Whereupon, the court reporter was duly
13 sworn.]

14 THE COURT: Grenell v. Troye comes on
15 Defendant's demurrer.

16 Thank you, Mr. Craig.

17 MR. CRAIG: Yes. Good morning, Your Honor.

18 Your Honor, this case is about an allegedly
19 defamatory statement made on Twitter about a former
20 ambassador, U.S. ambassador of Germany. That
21 statement was in the course of a discussion among two
22 sitting congressmen and a former aide to Vice

1 President Pence and my client Ms. Troye, and the
2 statements in that discussion were about the former
3 ambassador's performance of his duties as an
4 ambassador.

5 All of that is relevant, Your Honor, because
6 this is the kind of political speech that's given the
7 highest degree of protection under the First
8 Amendment in our legal system. The subject of the
9 Twitter discussion is a former cabinet-level official
10 who served as the Director of National Intelligence
11 as well as a former ambassador, which is our highest
12 ranking diplomat, obviously.

13 The discussion was about what he did in his
14 duties as U.S. ambassador to Germany. This is core
15 political speech, Your Honor, and I bring it up right
16 up front because I believe that colors the analysis
17 of the alleged statement and it affects the burden of
18 proof if this case were to go forward, which,
19 obviously, we don't think that it should.

20 We cite in our demurrer a number of reasons
21 why we think this complaint must fail. The first one
22 I want to talk about is that the complaint attempts

1 to bring this case based on statements not actually
2 made by Ms. Troye. Of course, defamation cases must
3 be based on the words that the defendant actually
4 uttered. That's a longstanding principle of Virginia
5 law. We refer to it as "in haec verba", and it is
6 important because the principle is that the claims
7 must be on words that are actually used, but this
8 complaint is not based on Ms. Troye's alleged
9 statement, but, instead, is based on words that she
10 never actually used.

11 What she is alleged to have said is that
12 while he was an ambassador, Ambassador Grenell tried
13 to get Vice President Pence to attend a white
14 supremacist gathering, but the complaint is largely
15 based on the allegation that what Ms. Troye said was
16 that Ambassador Grenell was a Nazi or that he
17 supports Nazi ideology. In fact, the first section
18 of the opposition to this demurrer is titled
19 "Defendant asserted as fact that Ambassador Grenell
20 associated with Nazis". That's simply untrue, Your
21 Honor.

22 Ms. Troye never used the word "Nazi". The

1 word "Nazi" was used by Congressman Swalwell, but it
2 was never used by my client.

3 Now, we all recognize, as the opposition
4 points out, that defamation can be based on the
5 so-called sting of the alleged defamatory statement
6 and that the courts are entitled to look at sort of
7 the import of what a statement means, but the
8 Virginia Supreme Court pointed out, has pointed out
9 several times, the case we cite our papers, Perk v.
10 Vector, which is a 1997 case, that when evaluating
11 the defamatory nature of a statement, courts should
12 not extend the meaning of the words used beyond their
13 normal ordinary acceptance.

14 The reason why we refer to Perk, Your Honor,
15 is I think it's particularly illustrative here. Perk
16 was an attorney who was engaged to collect debts on
17 behalf of a client and he was later discharged. Some
18 of the debtors complained that they weren't given
19 proper credit for payments that they had made to Mr.
20 Perk, and his former client said that, Well, that
21 Perk did not properly -- Perk was supposed to turn
22 those payments all over to his client, obviously, but

1 also accurately report the payments. The former
2 client said that Mr. Perk had not accurately reported
3 the payments that were made to him.

4 Mr. Perk sued, claiming that, essentially,
5 his client had claimed that he was dishonest in his
6 dealings with him, suggested that he had diverted
7 funds and that he had failed in his duty to report
8 those payments, and the Virginia Supreme Court said
9 that's too far of an extension. What the client said
10 was he didn't report the payments. He didn't say any
11 of those other things.

12 Well, that's much less of an extension than
13 what we have here. Here, what Ms. Troye is alleged
14 to have said is that while he was an ambassador,
15 Ambassador Grenell had suggested that Vice President
16 Pence meet with some folks that she referred to as a
17 white supremacist gathering. She said nothing about
18 Mr. Grenell's personal view or she certainly didn't
19 suggest that he was a Nazi or even that the folks
20 that he was meeting with were Nazis and, yet, the
21 complaint uses the term "Nazi", by my count, about 20
22 times.

1 As the opposition make clear, their position
2 is that she asserted that he associates with Nazis
3 and that he has a Nazi ideology, which is nothing
4 whatsoever what she said.

5 Now, the opposition makes much of the fact
6 that her Tweet began with the words "I do" and
7 assuming that she was responding to -- what happened
8 in sequence, Your Honor, is that Ambassador Grenell
9 had made a comment about Congressman Lieu's
10 connections with China or association with the
11 Chinese Government or something of that nature.
12 Congressman Swalwell made a comment that he had heard
13 that Ambassador Grenell may have hung out with Nazis.
14 Congressman Lieu responded to that and said he
15 thought he was an internet troll and asked if anyone
16 had proof of this.

17 So they are assuming that the term "I do" in
18 her response is in answer to Mr. Lieu's question
19 which was in response to Mr. Swalwell's statement.
20 Now, that's a pretty long chain. I don't want to
21 make it too confused, but the point is I think both
22 parties agree that the Court has to review the

1 statement in its totality, and what she said was "I
2 do" and then she went on to explain what she meant by
3 "I do", which was that she believed that he had
4 suggested that Vice President Pence attend a white
5 supremacist gathering.

6 She explained what she means by "I do".

7 There's no reason to further infer that she meant
8 anything else. What she said was that Ambassador
9 Grenell had suggested that Vice President Pence
10 attend a white supremacist gathering.

11 So just based on that, Your Honor, I think
12 that the demurrer should be sustained. The complaint
13 is almost entirely about this idea of Nazis. It's
14 included in paragraphs 20, 29, 37, 38, and 39. All
15 of the relevant sections of the complaint are based
16 on this idea that she had suggested that he was or
17 supports Nazis.

18 There's another reason why we think the
19 demurrer should be sustained, Your Honor, which is
20 that even if Mr. Troye had claimed that Ambassador
21 Grenell was a white supremacist -- which she did not.
22 She said nothing about his personal political beliefs

1 -- the term "white supremacist", the meaning of that
2 term depends largely on one's viewpoint, and when the
3 term turns on someone's viewpoint, the Virginia
4 Supreme Court has held that that term is not actual
5 for defamation. The case we rely on for that is in
6 our papers, Your Honor. That's *Fuste v. Riverside*,
7 which is a 2003 case.

8 So the test of, course, is whether the
9 statement can be proved true or false, and as the
10 Supreme Court points out, when the meaning of the
11 term turns on a viewpoint, it's not amenable to proof
12 of truth or falsity. That's never more true than in
13 a political discussion, Your Honor. I think that
14 anyone who's familiar with political discourse in
15 this country or any other knows that one man's
16 patriot is another man's fascist and one's man's
17 racist is another man's white supremacist. One man's
18 liberal is another man's communist.

19 These political adulations are not amenable
20 to being proven true nor false. It's particularly
21 true when we're talking about what appears to be a
22 foreign group. I don't know how, frankly, the Court

1 would take evidence as to whether or not this
2 particular group was a white supremacist or not; but,
3 regardless, the term, we believe, is not actionable
4 because it's not amenable to being proven true nor
5 false.

6 Now, they plead both defamation and
7 defamation per se, Your Honor, and I'd like to talk
8 about defamation per se for just a moment. We think
9 even if this statement were defamatory, which we
10 believe it's not, it's certainly not defamation per
11 se.

12 So the Virginia Supreme Court has set out
13 four types of defamatory statements that can be held
14 defamatory per se, and the case we cite for that is
15 the Fleming case, which is an '81 case, and the four
16 categories are: Criminal offense involving moral
17 turpitude, social disease, which is obviously not
18 relevant here, a statement that imputes unfitness to
19 performing the duties of an office, or a statement
20 that prejudices a person in his or her profession or
21 trade.

22 Now, the complaint relies primarily on the

1 first part of the Fleming test, arguing that being a
2 Nazi is illegal in Germany, and so calling Ambassador
3 Grenell a Nazi, which no one did, would impute a
4 crime to him. We explain in our papers why that
5 doesn't fit.

6 Your Honor, frankly, it appears that they've
7 abandoned that in their opposition. They didn't say
8 anything in their opposition about it. So, you know,
9 depending on what Mr. Binnall says, I'll stand on our
10 papers on that point.

11 In their papers, they rely more on three and
12 four, imputing an unfitness to perform the duties of
13 an office or prejudicing Ambassador Grenell in his
14 professional trade. So in their papers, we point out
15 that the Virginia Supreme Court has held that the
16 term "racist" is not defamatory *per se*, which that
17 was the Fleming case, and they acknowledge that in
18 their papers, but they try to evade the impact of
19 that case by saying that "white supremacist" is a
20 known term, that "racist" is not. They point out
21 that "white supremacist" is in the dictionary. Well,
22 "racist" is in the dictionary too, Your Honor. So is

1 "communist" and "fascist" and "authoritarian" and all
2 of these political terms.

3 So the fact that you can look up "white
4 supremacist" does not, I think, evade the holding of
5 Fleming, which is that "racist" is not necessarily
6 defamatory per se.

7 Moreover, the complaint and their papers do
8 not really explain how an ambassador advocating for
9 the Vice President to meet with a particular German
10 group, in this case an allegedly white supremacist
11 group, would prejudice him in his profession. One of
12 the roles of an ambassador is to arrange for meetings
13 with various political groups, foreign political
14 groups, and ambassadors for our country do that every
15 day, Your Honor. Ambassadors arrange for senior
16 officials to meet with fascists and communists and
17 people who have misogynistic political views or
18 bureaucratic politic views or any number of other
19 political views that most Americans would find
20 reprehensible.

21 The fact that an ambassador in his duties
22 abdicated for a politician to meet with a group that

1 might hold Nazi views does not necessarily impugn
2 that he is incapable of carrying out those duties.
3 It might be a criticism of his policy choices, but it
4 does not impugn him in an unfitness to perform his
5 duties, and nor does the complaint explain how this
6 statement has prejudiced Ambassador Grenell in his
7 profession or trade.

8 It's not really clear to me what his
9 profession or trade is at that point, Your Honor, but
10 he does say in his complaint that he works as a
11 consultant for his own company. He has not explained
12 and I don't understand, frankly, how a criticism
13 about the way he conducted himself as an ambassador
14 currently is prejudicing him in his current
15 profession or trade.

16 Again, I would refer the Court to Perk in
17 that -- the Perk case for that principle. Perk was
18 an attorney who it was suggested had not communicated
19 to his client the payments he received, and that was
20 not held to be defamation per se. How an ambassador
21 who is criticized for his policy choices of who the
22 Vice President should meet with, how that prejudices

1 Ambassador Grenell in his current profession, I don't
2 know.

3 Finally, Your Honor, we did argue in our
4 demurrer that damages are not properly pled here. I
5 don't disagree with Mr. Binnall that a precise
6 itemization is not required in our courts, but we
7 have to have some idea what the damages are. They've
8 pled a number, five million. That's a big number.

9 Are those economic damages? Are they
10 noneconomic damages? Did he lose clients? Is he
11 getting fired? We have no basis of understanding how
12 he thinks he's damaged by this statement, and I think
13 we're entitled to more information on damages than
14 what is pled.

15 THE COURT: Thank you, Mr. Craig.

16 Do you care to respond, Mr. Binnall?

17 MR. BINNALL: Yes. Thank you, Your Honor.

18 Jesse Binnall on behalf of Ambassador
19 Grenell.

20 Your Honor, to start off with, the complaint
21 does make very specific allegations, and that is that
22 Ms. Troye specifically lied in her statement, that it

1 was not a just simple misunderstanding of what
2 happened. It wasn't a mischaracterization of a
3 meeting. It is that she invented a gathering from
4 whole cloth, something that never occurred and she
5 published it for the world and it was something that
6 was viewed by thousands of people on Twitter and then
7 picked up by media organizations.

8 So this demurrer is nothing more than the
9 type of motion to prematurely short-circuit
10 litigation that the Supreme Court of Virginia
11 specifically warned against on multiple occasions in
12 cases such as Care Corps and Assurance Data, and in
13 this demurrer, they are limited to the pleading
14 standard in Virginia that has been set out in those
15 cases and others like them that the Court is very
16 familiar with time and time again.

17 The statement that they're attempting to
18 raise the bar on what we have to plead, especially
19 issues like damages, are an attempt for them to skip
20 to the end and invade the fact-finding province of
21 things that go beyond what's to be determined in a
22 demurrer. To skip -- to parse that to be determined

1 on summary judgment almost certainly would have to be
2 determined by the finder of fact at trial.

3 Even the defendant in her demurrer, on page 2
4 of her demurrer, defines her statement as a simple
5 factual statement, not a matter of opinion, "a simple
6 factual statement". That's the phrase they used in
7 the demurrer. Again, we are not splitting hairs
8 here. This is not saying, Well, this group isn't as
9 bad as they say it is or you're misunderstanding the
10 political ideology of Group A or Group B. That is
11 not part of this case. That is not what we are
12 alleging in the complaint.

13 What you have to do and what the Supreme
14 Court has been clear that you have to do in cases
15 like Highland that we've cited is you have to look at
16 the full context of the statement. So in this case,
17 Representative Swalwell specifically says that
18 Ambassador Grenell, quote, used to hang out with
19 Nazis when he was supposed to be representing us in
20 Germany.

21 Mr. Lieu responds: "To be honest, I don't
22 know much about Grenell. I just view him as a boring

1 internet troll. Do you have proof of this?"

2 It's at that point that Ms. Troye interjects
3 herself into this conversation and the first sentence
4 that she used is important here and cannot be read
5 out of this case, especially at the demurrer stage.
6 She says "I do".

7 While they suggest maybe that we don't know
8 what "I do" means as to her response to Congressman
9 Lieu, that's not a question for demurrer. That's a
10 question of context and insinuation and innuendo that
11 this Court at this point would be premature to decide
12 in her favor, first off.

13 Second off, it's very clear that she's
14 talking about the Nazi statement, because she then
15 immediately launches into "white supremacist". So
16 Statement 1, "I do" regarding hanging out with Nazis,
17 that's something that you can prove that he was doing
18 or that he was not doing and something for a diplomat
19 and someone whose profession is in diplomacy and
20 international relations and intelligence and advising
21 clients on that and serving the governmental roles,
22 that's something that is highly prejudicial if

1 they're hanging out with Nazis, especially since
2 hanging out with Nazis in Germany is a crime. When
3 Ambassador Grenell was accused of doing this, he was
4 in Germany.

5 So, first of all, "I do", is going directly
6 to the allegations regarding Nazis, but in reality,
7 the second part is really all we need, because the
8 second part is while in his role as ambassador,
9 Grenell tried to get Mike Pence to attend a white
10 supremacist gathering. There's no gathering,
11 nothing.

12 Again, we are not trying to say that the
13 gathering that they tried to get Vice President Pence
14 to go to wasn't as bad as they're saying it is.
15 We're saying there was no gathering. We're saying
16 this is a figment of her imagination that she has
17 then taken and lied to the world about, and that's
18 something very different than just simply name
19 calling. It is specifically making up a lie
20 knowingly and, at the very least, recklessly about an
21 event that never occurred.

22 And let's be honest. It's not a small thing

1 to be a Nazi or white supremacist. These are vile,
2 vile ideologies that should be constrained to the ash
3 heap of history. While they may want to downplay how
4 bad being a Nazi or white supremacist is, we don't.

5 The part about the definition that's
6 important in our opposition is, yes, that there's a
7 definition for "racist" and there's a definition for
8 others as well, but being a Nazi or being a white
9 supremacist is something that is more specific. It's
10 something that you can prove yes or no; but, again,
11 we don't even have to get to that point because this
12 gathering never existed and we pled very clearly that
13 this is something that never happened. There was no
14 such gathering, and to make that decision at this
15 point, at demurrer, before there's an opportunity for
16 discovery is something that the Supreme Court of
17 Virginia has continuously warned against.

18 She specifically interjected herself in this
19 conversation, in this Twitter exchange, saying that
20 she had proof of something. She did not. That's the
21 important thing here.

22 It's also important, Your Honor, that we

1 cannot conflate the fact-opinion analysis from the
2 true and falsity analysis. At this stage, while fact
3 versus opinion may be a question of law, the others
4 are viewed in their totality and are questions of
5 fact that must be determined at trial and, again,
6 that's from the Highland case.

7 We agree that freedom of speech is something
8 that is vitally important to our republic, to the way
9 that our system works. The First Amendment is
10 absolutely key, but time after time, courts have
11 correctly held that defamatory speech is not free
12 speech.

13 The First Amendment doesn't give you the
14 right to go around and lie or to make reckless
15 statements disregarding the truth. Ambassador
16 Grenell gave her the opportunity to correct her
17 statement immediately and to withdraw that, because
18 he said -- he pointed out it never happened. She
19 failed to do it. She failed to do it because it
20 didn't happen.

21 Your Honor, regarding the issues of
22 defamation per se, I'm not going to repeat myself,

1 but when you have somebody's career that is in
2 diplomacy and international relations saying that
3 they are trying to get one of the highest-ranking
4 government officials in the United States to meet
5 with a white supremacist is highly, highly damaging.
6 That's something that is one of these things that can
7 be a career ender, saying that they associate with
8 Nazis when the person was the ambassador to Germany
9 where, of course, Nazism, the scourge of Nazism,
10 arose from. That is something that is highly, highly
11 damaging that not only could be a crime, but
12 something that substantially affects him in his
13 chosen career. It is something that, especially at
14 this point, on demurrer, we have sufficiently pled.

15 If the Court wants us to plead more and be
16 more specific -- we don't think we need to. We think
17 we've met the pleading standing, but we'd ask for
18 leave to do that, but for what we have in the
19 complaint for the Virginia pleading standard, we have
20 pled defamation per se.

21 As to defamation itself, there is no
22 requirement that we plead to damages specifically

1 right now. That is a question of fact to be held for
2 trial, and as much as they may want to skip ahead to
3 that right now, that's not the stage that we're in.

4 There can be general damages. If the case
5 goes forward, if his damages are one dollar, general
6 or nominal damages, the question is -- and it's far
7 more than that, and the damages that will be shown in
8 evidence in this case will be substantial, but it's
9 not something to be determined at demurrer.

10 Your Honor, this is an important case. It's
11 an important case for both of these parties, and we
12 would ask that we not short circuit this process,
13 that we allow it to go through and continue.

14 I'm happy to answer any of the Court's
15 questions in addition.

16 THE COURT: I'll hear from Mr. Craig, last
17 word.

18 MR. CRAIG: Thank you, Your Honor.

19 I didn't think I'd have to say this, but let
20 me assure the Court that we understand how vile and
21 noxious Nazism is. I'm not trying to downplay that.
22 It's not something that I usually find having to say

1 in court, but we certainly agree Nazism is vile,
2 white supremacy is vile, but whether or not this
3 statement is defamatory does not turn on that issue
4 at all, nor are we trying to skip to the end.

5 We are trying to assure that this is a
6 properly-pled complaint, and it simply is not. One
7 cannot sue someone for a statement someone else said,
8 nor can one sue someone for a statement they did not
9 say.

10 Ms. Troye's statement has to be read
11 entirely, and I agree. I think we all agree on that,
12 and what she said was that as ambassador to Germany,
13 Ambassador Grenell suggested Vice President Pence
14 meet with a white supremacist group. That is not a
15 defamatory statement. It can be a criticism of how
16 he carried out his duties, a criticism of some of his
17 policies. It says nothing about his personal nature.
18 It says nothing about his personal beliefs and is
19 simply not a defamatory statement.

20 We certainly understand, yes, that they
21 wouldn't be suing if they didn't think it wasn't
22 true. Your Honor, that's the point of defamation.

1 We understand that the Court has to assume at this
2 point for the purpose of this motion that the
3 statement isn't true. You know, perhaps it goes
4 without saying that we believe the statement is true,
5 but that's not what we're here for today, Your Honor.
6 That's not what's before the Court.

7 What's before the Court is whether the
8 statement is defamatory, and as we've explained in
9 our papers and our argument, we believe it is not and
10 that this demurrer should be sustained.

11 THE COURT: Thank you, Mr. Craig.

12 Well, I've obviously read both pleadings with
13 a fair amount of interest and, Mr. Craig, I agree
14 with you to an extent. You know, the words that are
15 attributed to Ms. Troye are what's at issue here, not
16 the words of somebody else talking about Nazis, but I
17 think that at the demurrer stage, the pleading is
18 sufficient.

19 If it is believed that Mrs. Troye said that
20 Mr. Grenell encouraged the Vice President to go to a
21 white supremacist gathering and if can be proved that
22 that's not true, perhaps that could be found to be

1 defamatory. I agree with you, there are many reasons
2 that somebody could make that suggestion, whether
3 it's to see how vile what they were doing was or
4 whether it was in support, but I think that's a
5 matter for trial.

6 I think at this stage, the pleadings are
7 sufficient to survive demurrer. So I'm going to
8 overrule demurrer.

9 Mr. Binnall, I'd ask you to submit an order.

10 MR. BINNALL: Yes, Your Honor.

11 THE COURT: All right. Thank you all.

12 MR. CRAIG: Thank you, Your Honor.

13 [Whereupon, at 11:34 a.m., the matter was
14 adjourned.]

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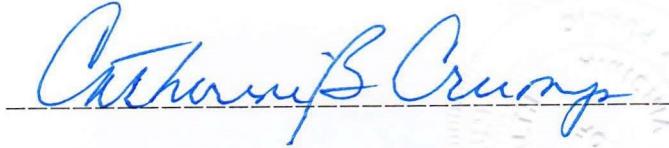
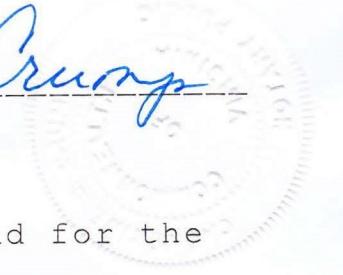
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I, CATHERINE B. CRUMP, the officer before whom the foregoing deposition was taken, do hereby testify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto nor financially or otherwise interested in the outcome of the action.


CATHERINE B. CRUMP


Notary Public in and for the

Commonwealth of Virginia

Notary Registration No. 252644

My Commission Expires: May 31, 2025

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